



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

Ms. Katherine B. Cahill
Senior Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR96-1793

Dear Ms. Cahill:

You ask this office to reconsider our decision in Open Records Letter No. 96-1083 (1996). We assigned your request for reconsideration ID# 100961.

In Open Records Letter No. 96-1083 (1996), we concluded that the San Antonio Water System ("SAWS") must withhold certain manifests relating to All Pro Plumbing, one of the third parties whose proprietary interests may have been implicated by an open records request received by SAWS on March 1, 1996, because All Pro Plumbing had established that the manifests were excepted from required public disclosure under the "commercial or financial information" branch of section 552.110 of the Government Code. We also ruled, however, that none of the other third parties whose proprietary interests may have been implicated by the request had established that the manifests were excepted from required public disclosure and, therefore, SAWS must release the manifests relating to those companies to the requestor. We based this ruling on the fact that we had not received correspondence from any other third parties, except for copies of letters addressed to SAWS, asserting that the requested information is proprietary in nature.

TrapMaster, one of the above-mentioned third parties, explains that it had timely responded to our notification but that this office issued Open Records Letter No. 96-1083 (1996) within days of receipt of its response, apparently without considering TrapMaster's arguments against disclosure. We have reviewed the file and agree that TrapMaster timely responded to our notification and that we apparently did not consider its objections to disclosure. Accordingly, we now consider TrapMaster's arguments to withhold the requested information on the merits.

The request seeks "the San Antonio Water System Quality Control Department Manifests for Hauled Liquid Waste. This includes Manifest books dated December 1995 through the date of a ruling on this request by the Office of the Attorney General." In its response to our notification, TrapMaster argues that the requested information should be excepted under section 552.110 of the Government Code.

Section 552.110 excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). See Open Records Decision No. 639 (1996). Commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

To establish that the public release of information is likely to cause substantial competitive harm, a business must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. See Open Records Decision No. 639 (1996) at 4 (citing *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397 (5th Cir.), cert. denied, 471 U.S. 1137 (1985)). We have reviewed TrapMaster's arguments under section 552.110 as well as the submitted documents. We believe that TrapMaster has established that they actually face competition and that substantial harm to their competitive position would likely result from the release of the information. Accordingly, you must withhold TrapMaster's manifests under section 552.110 of the Government Code. This decision modifies Open Records Letter No. 96-1083 (1996) to the extent that it ruled otherwise.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100961

Enclosures: Submitted documents

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